



Comptroller General
of the United States
Washington, D.C. 20548

Schatz

142474

Decision

Matter of: General Hone Corporation

File: B-242357.2

Date: March 22, 1991

Tom Connor for the protester.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request for reconsideration of dismissal of protest as untimely is denied where protest was not filed with General Accounting Office (GAO) within 10 working days after decision denying agency-level protest, which constituted initial adverse agency action; although agency subsequently issued--after 10-day timeliness period had run--a decision denying agency-level request for reconsideration for a different reason, this did not become initial adverse action for purposes of determining timeliness of GAO protest.

2. Protester's lack of knowledge of filing deadlines under General Accounting Office Bid Protest Regulations is not basis for waiving timeliness requirements; protesters are on constructive notice of the Regulations since they are published in the Federal Register and Code of Federal Regulations.

3. Significant issue exception to the General Accounting Office's timeliness requirements will not be invoked where protester is challenging rejection of its proposal as technically unacceptable; protest on this ground does not involve issue which has not previously been considered, and is not of widespread interest to the procurement community, the two conditions for applying the exception.

DECISION

General Hone Corporation requests reconsideration of our December 14, 1990, dismissal of its protest under request for proposals (RFP) No. N00600-90-R-1978, issued by the Department of the Navy for a honing machine. We dismissed the protest on the basis that it was untimely filed.

We deny the request.

In its protest, received in our Office December 14, 1990, General Hone argued that the agency improperly had eliminated the firm from award consideration on the grounds that its technical proposal was unacceptable and had been submitted late. The protest submission indicated that General Hone was advised on September 27 that its proposal had been rejected due to technical deficiencies, and that the firm protested to the agency on this ground by letter of September 28. In a November 13 letter, the Navy reiterated its prior determination, specifying that General Hone's machine was unacceptable for failure to offer the proper machine table. At this point, the protester engaged in discussions with the Navy, which culminated in a November 20 meeting. Following the meeting, General Hone filed a formal request for reconsideration of the agency's unacceptability determination. On November 30, the Navy responded by advising General Hone that its technical proposal had not been submitted in a timely fashion.

We dismissed the protest as untimely because it was filed more than 10 working days after General Hone received the agency's November 13 letter denying its agency-level protest challenging the rejection of its proposal as technically unacceptable. Under our Bid Protest Regulations, where a protest initially has been filed with the contracting agency, any subsequent protest to our Office must be filed no later than 10 working days after the protester has notice of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3) (1990); Rocky Mountain Helicopters, Inc.--Recon., B-231898.2, Aug. 22, 1988, 88-2 CPD ¶ 169.

In its reconsideration request, General Hone argues that its protest to our Office was timely because it was filed within 10 working days of the agency's November 30 response to the firm's request for reconsideration of the original rejection. General Hone argues that since the agency's denial of this reconsideration on November 30 was based on the lateness of its proposal, not the acceptability of the proposal, lateness became the basis for the rejection of the proposal, and the firm thus had 10 working days after November 30 to protest this agency position to our Office.

We do not agree. General Hone's position is premised on its view that the Navy's November 13 affirmation of the reason for rejecting the firm's proposal was, at best, an intermediate response with no final effect. In fact, however, the November 13 answer to General Hone's protest clearly constituted initial adverse agency action as contemplated by our Regulations; whether or not General Hone agreed with it in substance, the decision set forth the agency's position that

its original determination was correct and that it considered the protester's contrary position to be without merit.

Once informed of initial adverse action on its agency-level protest, a protester may not delay filing a subsequent protest with our Office while it continues to pursue the protest with the agency; while continuing to discuss the matter with the agency is of course an option that a protester may elect, it will not toll the running of the 10-day period for protesting to our Office. Rocky Mountain Helicopters, Inc.--Recon., B-231898.2, supra. General Hone opted to continue pursuing its protest at the agency level after receiving the Navy's decision denying its September protest, instead of protesting to our Office within 10 working days, that is, by November 28. Because the firm's protest challenging the rejection of its proposal was not filed with our Office by that date, it was untimely.

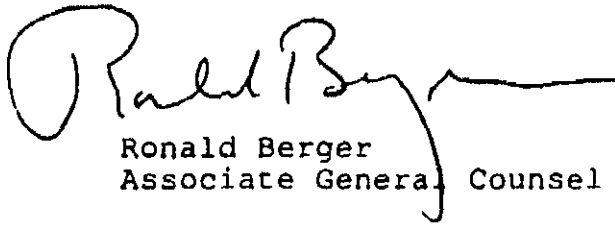
Our conclusion is not changed by the fact that the Navy's November 30 response to the agency-level reconsideration request cited a different reason for rejection of the proposal than the one cited in the November 13 denial of the agency-level protest. There was no indication in the Navy's November 30 reconsideration response, citing only the lateness of the firm's proposal, that the agency had abandoned its original position that General Hone's proposal was technically unacceptable, and there was no other evidence that this was the case; General Hone did not even assert that the agency changed its position in this regard at the November 20 meeting. In fact, its argument here aside, General Hone itself apparently was not satisfied that the Navy considered its proposal acceptable, as evidenced by the fact that its protest submission addressed the technical acceptability issue, not just the lateness issue. Thus, the November 30 response did not, as General Hone suggests, supplant the Navy's November 13 decision as the initial adverse agency action for purposes of determining the timeliness of the protest to our Office.

General Hone argues alternatively that any untimeliness of its protest essentially should be waived because the firm lacked actual knowledge of our Office's filing deadlines. A protester's lack of knowledge of our Regulations is not a defense to a dismissal of a protest as untimely; prospective contractors are on constructive notice of our Regulations since they are published in the Federal Register and Code of Federal Regulations. Rocky Mountain Helicopters, Inc.--Recon., B-231898.2, supra.

Finally, General Hone asserts that, even if its protest is untimely, we should consider the protest under the significant issue exception to our timeliness rule, as provided in

4 C.F.R. § 21.2(b). However, as we stated in our prior decision, the significant issue exception does not apply here, because the issues raised relate only to the timeliness and technical acceptability of the protester's proposal; such issues are neither of first impression nor of widespread significance to the procurement community.

The request for reconsideration is denied.



Ronald Berger
Associate General Counsel